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Open-ended Inter-sessional working group on a
draft United Nations declaration on the
rights of indigenous peoples
First session
20 November-1 December 1995

CONSIDERATION OF A DRAFT UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Information received from non-governmental and indigenous organizations

1. In its resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission on Human Rights to elaborate a draft declaration, considering the draft contained in the annex to resolution 1994/45 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "Draft United Nations declaration on the rights of indigenous peoples". In the same resolution, the Commission requested the Secretary-General to invite Governments, intergovernmental organizations, non-governmental organizations in consultative status with the Economic and Social Council and organizations of indigenous people authorized to participate to submit, for consideration by the working group, comments on the draft declaration submitted by the Sub-Commission. The Economic and Social Council in its resolution 1995/32 of 25 July 1995 authorized the establishment of the working group.

2. The present document contains information received from non-governmental and indigenous organizations. Further information will be made available in addenda to this document.

INTERNATIONAL INDIAN TREATY COUNCIL

[Original: English]
[3 August 1995]

1. The IITC has participated at every stage of the progress of the draft declaration with great interest. We have great hopes for its adoption, as the draft declaration is the only human rights instrument to have been written with the participation of those most concerned, indigenous peoples themselves.

2. We are concerned, however, about reports that some States have raised the "problem" of the definition of "indigenous peoples" at various forums within the United Nations, concerned that, somehow, some persons or groups not "entitled" to the rights posited in the draft declaration might somehow take advantage of them.

3. Mr. José Martínez Cobo, in his seminal Study of the Problems of Discrimination against Indigenous Peoples, provided the following definition:

> "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems."

4. In addition to these objective criteria, Mr. Cobo included a subjective aspect, that of an indigenous person being "one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group)".

5. Although this definition is not entirely satisfactory, the Cobo definition has been the United Nations working definition since Mr. Cobo's study was published.

6. But, as the Working Group on Indigenous Populations has so wisely determined by its practice, the definition of indigenous peoples or persons is the concern of indigenous peoples themselves, and not the States. Indeed, article 8 of the draft declaration recognizes the right of indigenous peoples to identify themselves as indigenous and to be recognized as such.

7. It appears to the IITC that there is no problem of "definition". The right to define oneself and to be recognized as indigenous is a right that indigenous peoples may claim, along with the right to self-determination. Indeed, this right of identity is in itself an important aspect of the right to self-determination.

8. For indigenous peoples all over the world, the enjoyment of all other human rights and fundamental freedoms is dependent on the enjoyment of the inherent right to self-determination.

9. The IITC recalls that the right to self-determination was considered by the General Assembly as it drafted the conventions giving life to the human rights set out in the Charter of the United Nations and the Universal Declaration of Human Rights.

10. In that consideration, Aureliu Cristescu was appointed Special Rapporteur of the Sub-Commission on the right to self-determination. In his report to the Sub-Commission (E/CN.4/sub.2/404 (vols. I-IV and Add.1), he found central to this right, the right of equality: it was understood that the principles of equal rights of people and that of self-determination are two component parts of one norm.

11. It has also been said that the right to self-determination is a prerogative of a community, that it is the right of individuals in association, and that any encroachment on it as a collective right would be a breach of the fundamental freedoms of those individuals.

12. Most relevant to the stated objections of some States with regard to the right of self-determination of indigenous peoples, Mr. Cristescu found that there was no doubt that the right to self-determination existed without regard to time: that was to say, that the right pre-existed the norm as set out in the Charter.

13. No one can deny that indigenous peoples enjoyed the right to self-determination before the colonial conquest, since time immemorial. Neither time nor oppression have extinguished it.

14. Some States began their process of nation-building by recognizing the sovereignty and self-determination of indigenous nations by entering into treaties with them on nation-to-nation basis, recognizing the principle of equality between peoples. The failure of the right to self-determination for indigenous peoples in these States did not come from lack of any constitutional or juridical foundation for the right. It stems from the fact that many of these treaties, as well as early (and still valid) decisions of their supreme courts recognizing indigenous self-determination, were not honoured, or worse, systematically violated by the States themselves.

15. Other States have recognized the right to self-determination of indigenous peoples in their Constitutions and systems of law, some providing, inter alia, for the right of indigenous peoples to communal lands. The failure in many of these countries of the right to self-determination has come not just from chronic failures to observe the law, but from sudden and arbitrary changes in these Constitutions and laws, depriving indigenous peoples of these fundamental rights.

16. Other States did not enter into treaties or protect indigenous peoples' right to self-determination through their laws. Many times under the guise of assimilationism, they continue to rely on the force of arms, genocide and conquest to maintain their dominion over sovereign indigenous peoples.

17. The end result has been the same in all of these cases: indigenous peoples all over the world today are denied the right to self-determination, upon which their very survival as peoples depends.

18. The IITC, since 1974, has addressed within the United Nations many violations of the human rights and fundamental freedoms of indigenous peoples, primarily before the Working Group on Indigenous Populations and the Commission on Human Rights. Examples abound from every corner of the world of how the denial of self-determination leads to every conceivable kind of human rights abuse. To paraphrase Mr. Cristescu, without the right to self-determination, other human rights are devoid of all meaning. Indeed, as he pointed out, there can be no lasting peace between peoples unless this right is observed and enjoyed.

19. The IITC emphasizes that the right of self-determination is not dependent on the draft declaration; indigenous peoples had that right even before the United Nations and many of its Member States were conceived, even before many colonial societies themselves were formed. The draft declaration merely presents standards to which the world should aspire, if, as stated in Article 55 of the Charter, the United Nations is to "promote ... universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

20. Indeed, it is not a proper role for the United Nations to invent human rights and fundamental freedoms, nor is it its role to pick and choose to whom those rights belong. Its role is simply to assist in the realization of human rights and fundamental freedoms, and to conduct studies and make recommendations for the purpose of promoting respect for, and observance of these rights and freedoms.

21. With this in mind, IITC congratulates and thanks members of the United Nations Working Group on Indigenous Populations and the hundreds of indigenous peoples who participated in the process for their many years of hard work resulting in the draft declaration on the rights of indigenous peoples. The document does contain recognition of many essential rights and freedoms vital to the interests and survival of indigenous peoples in many regions of the world. Again, these fundamental rights and freedoms have existed since time immemorial. Those who have been deprived of those fundamental rights and freedoms are only too well aware of their denial as well as the need for their recognition and promotion.

22. With regard to other issues raised in the draft declaration, as in other international human rights instruments, Part VI of the draft declaration, describing the rights of indigenous peoples to own, develop, control, use and protect their traditional ancestral lands and resources, is also critical to their enjoyment of the right to self-determination, as is the call for the full recognition of treaties and agreements entered into by indigenous peoples in good faith with nation States.

23. The issue of land is critical to the right to self-determination as indigenous peoples continue to be denied their means of subsistence as peoples, denied their traditional values, their cultures, religion and spiritual practices, their social systems and traditional knowledge, and

institutions. Without their traditional lands they are denied their very identity as peoples.

24. The IITC is aware of the concern of various States that the draft declaration's recognition of the right to self-determination may somehow lead to national instability or contribute to the demise of States. In our view, it is the failure to recognize this basic right of peoples that has contributed to the destruction of States. It is the denial of this fundamental right that threatens the peace and stability as well as the moral integrity and national honour of States. It is the failure to observe this basic right and fundamental freedom of all peoples that causes massive violations of human rights and fundamental freedoms in all parts of the world today. Until it is resolved, it will continue to be a source of profound division and frequently violent conflict between peoples.

25. As the United Nations struggles towards universal respect for human rights and fundamental freedoms, it cannot abandon the ideals of the International Bill of Human Rights as they apply to indigenous peoples. Nor can States deny that the fundamental right of indigenous peoples to self-determination exists and has existed since time immemorial. The draft declaration does not establish this primordial right, but serves as an affirmation of that pre-existing right.

As Mr. Aureliu Cristescu reported, the right to self-determination in the Charter is merely a point of departure for a "dynamic development" of the principle and its legal content, "... its implementation and its application to the most varied situations of international law". We look forward to participating in that development.

THE SAAMI COUNCIL

[Original: English]
[27 May 1995]

1. The draft declaration as agreed upon by the members of the Working Group on Indigenous Populations at its eleventh session, reflects a democratic procedure that encouraged broad indigenous contributions. Indigenous peoples, Governments, specialized agencies and concerned NGOs have made important and substantive contributions during the annual sessions of the Working Group in this regard.

2. The Sub-Commission on Prevention of Discrimination and Protection of Minorities made a vital recommendation to the Commission on Human Rights and the Economic and Social Council to take effective measures to ensure that representatives of indigenous peoples are able to participate fully in the consideration of the draft declaration by these two bodies, regardless of their consultative status with the Economic and Social Council. The Saami Council notes with regret that the Commission on Human Rights at its fifty-first session did not take fully into account this recommendation of the Sub-Commission.

3. The Saami Council emphasizes the importance of the speedy adoption by the General Assembly of a declaration on the rights of indigenous peoples.

Because of the problems faced by indigenous peoples and the atrocities imposed on them, the adoption of such a universal instrument on the rights of indigenous peoples is, from our point of view, a matter of the utmost urgency. There is a clear causality between the absence of such a universal instrument and the problems faced by indigenous peoples.

4. The draft declaration on the rights of indigenous peoples is an elaboration of human, cultural and social values, and contains basic rights and fundamental political and legal principles. The Saami Council is of the opinion that the draft declaration removes the present discriminatory application of the Charter of the United Nations, as well as of the law of nations, as it states the principle of the equality of indigenous peoples with other peoples.

5. The Saami Council is of the opinion that the draft declaration as agreed upon by the members of the Working Group on Indigenous Populations at its eleventh session should be the basis of the new established open-ended working group's elaboration of a declaration on the rights of indigenous peoples.

6. The principles in the draft declaration relating to equality and non-discrimination are, from our point of view, fundamental to the draft. In this regard, the right of self-determination for indigenous peoples is essential, not because this right is a right of the indigenous only, but because it is a right of all peoples. Implementation of the fundamental principles of equality and non-discrimination calls for equality also in this regard. The right to self-determination is a right of all peoples, therefore indigenous peoples cannot be denied this fundamental right.

7. The recognition of the indigenous peoples' right to cultural identity, as well as their right to physical existence is also essential. Part II of the draft declaration focuses on subjects of current interest for indigenous peoples, and states four very important principles in regard to: forced assimilation, forced relocation, militarization of indigenous territories and the official denial of indigenous identity.

8. The parts of the draft which deal with aspects of strengthening the distinctiveness of indigenous societies within the framework of existing States also need to be underlined as essential parts of the draft. Generally speaking, they focus on indigenous rights to equality, self-determination and collective identity, inter alia, religious, spiritual, cultural and linguistic freedom.

9. Besides the principle concerning indigenous peoples' right to self-determination we would also define indigenous peoples' right to land, territories and natural resources as the most important principles in the Draft Declaration. We see self-determination as a collective human right. Self-determination is an important human right because the exercise of this right is a condition for the enjoyment of all individual human rights, be they civil, political, economic, social or cultural. From our point of view there are two fundamental aspects of the right to self-determination: the political and economic aspects. The political aspect recognizes the rights of indigenous peoples to determine their own political status; the economic aspect recognizes the right to control their land and natural resources.

10. Land is one of the most fundamental concerns for indigenous peoples. We depend on it for our material and cultural survival. The united indigenous demand for the right to own, develop, control and use the lands and territories which they traditionally owned or otherwise occupied or used is based on their dependence on it.

11. We are aware that the questions concerning the right to self-determination and indigenous land rights will be the most difficult issues in the forthcoming debates within the United Nations, as well as the national level. What is necessary in the forthcoming dialogue is the willingness of all parties to consider this question in the right context.

12. The draft declaration represents from our point of view minimum universal standards concerning the rights of indigenous peoples. The present draft should therefore certainly not, in any part, be made weaker.

SERVICE, PEACE AND JUSTICE IN LATIN AMERICA

[Original: Spanish]
[1 August 1995]

1. We are gratified that since the draft was introduced it has been recognized that indigenous peoples contribute to the diversity and wealth of civilization and of cultures. Having considered the draft, we note that the proclamation of rights would include points of vital importance to indigenous peoples such as the following:

The right to the effective enjoyment of all rights and freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law;

Recognition that indigenous peoples are free and equal to all other peoples in dignity and rights and that they have the right to be free from adverse discrimination based on their origin or identity;

The right of indigenous peoples to preserve their traditions and customs;

The right of indigenous children to all levels and forms of education of the State;

The right of indigenous peoples to participate in decision-making in matters which may affect them;

Above all, their right to own, develop, control and use the land, recognizing their direct relationship with the lands and territories which they have traditionally owned, and which have in many cases been confiscated and occupied without their free consent.

Protection of the environment has been taken into consideration and it has been determined that military activities shall not take place in the lands and territories of indigenous peoples. (Proclamation of this right would prevent devastation of the biodiversity of the natural lands

owned by the indigenous peoples from occurring in case of war, as happened in Ecuador during the armed conflict in January 1995.)

2. The United Nations will use its influence to ensure that States take the necessary measures to implement the provisions of the declaration and that none of the rights acquired by indigenous peoples in the future may be diminished or extinguished.

WORLD COUNCIL OF INDIGENOUS PEOPLES

[Original: English]
[26 July 1995]

1. We hope and expect that the Working Group will listen to and respect the voice of indigenous peoples. We urge it in the strongest possible terms to respect the 10-year process of collaboration between indigenous peoples, States and the Working Group on Indigenous Populations that is reflected in the draft declaration and to use that document as the basis for its work, rather than simply consider it, as stated in Commission on Human Rights resolution 1995/32. We also hope that the Working Group's consensus decision-making process will not be used to delay, force compromise or otherwise confound a meaningful and mutually rewarding dialogue on the draft declaration.

2. We see the draft declaration as a unique opportunity for the United Nations and its Members to continue the elaboration of international human rights standards, without regard to race, religion, gender or socio-economic status, and to recognize the continuing vitality of Articles 55 and 56 of the Charter of the United Nations and their progeny. We hope that the Working Group will seize this opportunity to take positive steps to take the necessity of decolonization and the right of all peoples to live in freedom and dignity to its logical conclusion and, thereby, put an end to over 500 years of domination and oppression. If this is to happen, the draft declaration must be approved and forwarded with its core themes intact - self-determination, autonomy and self-government, free and informed consent, political participation rights, guaranteed rights to lands, territories and resources and respect for indigenous identity, existence and aspirations. Any attempt to weaken the draft declaration or to equate it to the inadequate standards of ILO Convention No. 169 will be widely regarded as regressive, unacceptable and unresponsive to the needs of the intended beneficiaries.

Self-determination

3. We would like to reiterate, at the outset, that recognizing indigenous peoples' unqualified right to self-determination is not a threat to State sovereignty and territorial integrity. We hope that assertions to this effect will not be raised in the Working Group, and if they are, that they will not be given any credence by its members.

4. We recognize that the right to self-determination attaches to peoples whereas sovereignty and territorial integrity are rights belonging to States. Both historical and current events provide ample evidence that these rights

may conflict and lead to discord and violence as each party attempts to assert and defend their rights. Therefore, if this situation is to be avoided, some mechanism must be sought that will provide a middle ground by which peoples and States can recognize their respective rights, duties and aspirations. We believe that the draft declaration is such a mechanism in that it calls for a partnership between States and indigenous peoples based upon mutual respect and understanding, and for recognition of the right to the continued existence, security and development of each party, and offers dialogue, cooperation and consent as the means to peaceably resolve differences.

5. With this in mind, we would like to make a few points about the right to self-determination and how that right is expressed in the draft declaration. First, indigenous peoples view the right to self-determination as the framework within which we can effectively realize and enjoy all other human rights and ensure our cultural integrity and survival. Respect for this right is of fundamental importance not only to indigenous peoples, but also to international peace and security. We, therefore urge as a matter of priority that the United Nations and its Members respect the inclusion of this right in the draft declaration and not attempt to qualify, limit or otherwise weaken it.

6. That the right of all peoples, including indigenous peoples, to self-determination is a prerequisite for the enjoyment of all other human rights has been repeatedly recognized within the United Nations system and elsewhere. In the words of the chairperson of the Working Group on Indigenous Populations, indigenous peoples are "unquestionably" peoples, entitled to all the attendant rights, "in every political, social, cultural and ethnological meaning of this term [and] it is neither logical nor scientific to treat them as the same 'peoples' as their neighbours, who obviously have different languages, histories and cultures". She adds that, "the United Nations [and its Members] should not pretend, for the sake of a convenient legal fiction, that those differences do not exist". Consequently, we believe that a failure to recognize indigenous peoples' inherent right, as peoples, to self-determination is not only racist and demeaning, but also violates the fundamental principle of equality and non-discrimination as defined in the Charter of the United Nations and elsewhere.

7. Second, as noted above, with regard to indigenous peoples the conflict between the rights to self-determination and territorial integrity does not necessarily arise. This is true for two reasons: first, indigenous peoples have consistently stated that our aspirations do not include independence or secession, but rather autonomy and control over the direction of our lives and affairs. Second, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States recognizes that the exercise of the right to self-determination is contextual and includes a range of options in addition to secession and independence. It states that, "the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people". Therefore, simply stated, the core of the peoples' right to self-determination in international law is the right to freely determine the nature and extent, if

any of their relationship with other peoples and need not necessarily involve secession or territorial dismemberment.

8. Third, we believe that the inclusion of an unqualified right to self-determination in the draft declaration, does not encourage secession; to the contrary, it specifically discourages secession. Article 45, for instance, states that "nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations". This article speaks directly to, inter alia, the need to respect the right of States to territorial integrity.

9. Fourth, article 3 states the basic principle that indigenous peoples have the unqualified right to self-determination as that right applies to other peoples under international law. When read in conjunction with article 31, a preference is stated that indigenous peoples' right to self-determination be expressed in the form of autonomy and self-government. However, this is a preference not a limitation, qualification or the exclusive means of exercising that right. This is supported by the preamble which states that "nothing in this Declaration [presumably including article 31] may be used to deny any peoples their right to self-determination".

10. Finally, in her explanatory note on the draft declaration, the chairperson states that indigenous peoples must exercise their right to self-determination through the State's political and legal systems unless these systems are "so exclusive and non-democratic that [they] can no longer be said to be representing the whole people". This is in accord with the Declaration on Friendly Relations which states that "nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples' as described above and thus ... representing the whole people belonging to the territory without distinction as to race, creed or colour".

11. Given the preceding, it would be accurate to state that the draft declaration requires indigenous peoples to work within the constitutional and democratic systems of the State, through the establishment of effective partnership based upon mutual respect and good faith. The State has a corresponding duty to accommodate the exercise of indigenous peoples' rights to self-determination, autonomy, self-government and participation through power sharing and legal constitutional and democratic reform. This essentially recognizes the rights of indigenous peoples to autonomy and self-government and to participate in the determination of the democratic and political systems under which we shall live, while simultaneously respecting the sovereignty and territorial integrity of the State. The option of secession may only be exercised by indigenous peoples should the State fail to accommodate their rights and be so abusive and unrepresentative "that the situation is tantamount to classic colonialism". Consequently, States have nothing to fear from indigenous peoples exercising our right to self-determination provided that they recognize, respect and guarantee that right in good faith. Indeed, a harmonious relationship with indigenous peoples can only enhance the well-being and stability of the State.

Consent and political participation

12. Part and parcel of the right to self-determination and the concept of partnership is the principle of free and informed consent. This principle is a necessity if the partnership between indigenous peoples and States is to be based upon mutual respect and equality. Therefore, if the United Nations and its members are serious about the concept of partnership, this standard must be respected and included in the draft declaration. To delete it from the draft declaration in favour of a lower standard, such as consultation or agreement would substantially weaken the core theme of the document, the efficacy of its specific provisions and would be in direct contradiction to General Assembly resolutions 45/164 and 48/163.

13. The political participation rights in the draft declaration provide the means by which the State and indigenous peoples can develop, promote and implement a cooperative partnership and ensure that their respective rights and duties are respected. The sum total of these articles (arts. 4, 19 and 20) is to recognize that indigenous peoples have the right to participate as full partners with the State in all decisions that may affect our rights, lives and interests. This of course recognizes that indigenous peoples, as peoples, have rights, over and above the right of individual citizens or persons belonging to minorities, to determine and maintain both our internal political, legal and cultural institutions and to participate fully in the democratic and administrative systems of the State.

14. That indigenous peoples have rights to political participation to a greater extent than individuals is not new to international law or to the domestic law of many States. It merely requires States to comply with the democratic principles that form the basis of their legitimacy and to be representative of and responsive to the needs of all the people and peoples that are affected by their actions. We urge the Working Group to respect these principles as defined in the draft declaration and not delete, weaken or modify them in any way.

Lands and territories

15. Indigenous peoples' lands and territories are the foundations of our cultures, of our religious and spiritual traditions and of our identities and survival as distinct peoples. This nexus between lands, territories and culture has been repeatedly recognized. The United Nations Human Rights Committee, the Inter-American Commission on Human Rights, the United Nations Conference on Environment and Development (UNCED) and the International Labour Organization, among others, have all required that indigenous peoples' unique relationship with our lands and territories be respected and protected as an integral part of our cultural integrity and human rights. Rights to engage in traditional subsistence practices and other economic activities and the need to protect the requisite resources are also included under the same rubric.

16. Importantly, the draft declaration also recognizes the imperative of guaranteeing indigenous peoples' land rights. It makes the important statement that "any action that has the aim or effect or dispossessing [indigenous peoples] of their lands, territories and resources "is ethnocide, in that it will lead to our cultural disintegration and extinction as distinct

peoples and cultures (art. 7 (b)). For indigenous peoples, taking or interfering with the use of our lands, territories and resources and severing our connection with those lands is tantamount to killing us - it may not kill us physically, but it will kill us as peoples, as spiritual and cultural beings.

17. Given the relationship between our lands and resources and our survival as peoples, many indigenous peoples feel that the draft declaration's provisions on lands and territories do not go far enough. However, they certainly are an improvement over the provisions of ILO Convention No. 169, which are inadequate and do contain a number of important protections. Therefore, these rights must be respected by the Working Group in toto, if not improved upon, as they are now defined in the draft declaration.

18. Articles 25, 26 and 27 go far in repudiating the doctrines of terra nullis, discovery, conquest. These legal fictions, inspired by notions of racial and cultural superiority, were created for no other purpose than to justify the expropriation of our lands and territories by invading and colonial powers. A number of States, not to mention the International Court of Justice, have also rejected at least one of these offensive doctrines and have recognized pre-existing, aboriginal rights to lands and territories. This at least recognizes that indigenous peoples have, in most cases, not ceded rights to our lands and territories and that these lands are presently occupied or used without our consent. Consequently, articles 25, 26 and 27 recognize our rights to own, use, develop and control our lands, territories and resources, and to be compensated in cases where they have been expropriated, used or damaged without our free and informed consent. The right to own property is well established in international human rights law and must be respected and guaranteed as are all other human rights.

19. Article 28 further concretizes the human rights to a healthy environment as expressed in regional and global instruments. This right is extremely important and relevant to indigenous peoples given our spiritual and cultural relationship to our lands and territories. Indigenous peoples do not desecrate the sacred sites and religious places of other peoples, why should other peoples violate ours and why should the United Nations and its Members not do everything in their power to end, or at least prevent this behaviour. In the words of the Sub-Commission's Special Rapporteur on human rights and the environment, "all environmental degradation has a direct impact on the human rights of indigenous peoples dependent on that environment".

20. The right to a healthy environment is also inseparably linked to indigenous peoples' right to maintain and practise traditional subsistence and other economic, cultural and health practices as defined in, among others, articles 12, 21, 23 and 24. This is the case because many of these practices are land based and land derivative. Therefore, if the land and its resource base are damaged or destroyed by environmental degradation, indigenous peoples' means of subsistence and resources necessary for health, artisanal and other cultural and religious practices will also be damaged or destroyed. Our rights to physical health and well-being, to family life and residence are also negatively impacted. This fact has been recognized by both the Human Rights Committee and the Inter-American Commission on Human Rights, which have judged deprivations of resources needed for subsistence, health and other

practices, particularly in the context of development related activities and environmental degradation, to be human rights violations requiring immediate and effective remedy.

Development

21. The devastating effects of so-called development on the lives, cultures, lands and rights of indigenous peoples are well documented and need not be repeated here. These abuses of indigenous peoples' most fundamental rights are a direct result of the failure to respect our identity, cultures, rights to our lands and the ethnocentric and economics-centred biases of development itself. Consequently, the draft declaration contains a number of principles that directly address this subject. Of particular importance are the principles contained in articles 3, 4, 23, 30, 31 and 33. Articles 3, 23 and 31 all require that indigenous peoples determine and control the direction of our economic, social and cultural development. This recognizes indigenous peoples' inherent right to determine our own priorities for the development process and to define the content of that process according to our own needs, aspirations and identities. Article 30 recognizes that the State also has an interest in development, particularly with regard to sub-surface and other resources. It requires that States and indigenous peoples address issues of common concern within the context of partnership and with due regard to their respective rights and duties.

22. The measures noted above are in conformity with changes in development theory and practice in the post-UNCED world, which requires participatory development, culturally-appropriate modes and benefits, environmental safeguards and sustainability and respect for identity and local preferences. Multilateral development actors, including the Asian and Inter-American Development Banks, the World Bank and UNDP have all incorporated these notions into their policy directives and guidelines. These organizations also recognize that indigenous peoples are entitled to special measures to protect our rights and interests. Agenda 21 and the Rio Declaration on Environment and Development, which have been signed and approved by most States, also recognize the necessity for culturally-appropriate, human-centred development and the need for special measures to protect indigenous peoples' rights. The draft declaration simply contextualizes and elaborates upon these principles.

Collective rights

23. The draft declaration's recognition of indigenous peoples' collective rights is one of its most positive aspects. This recognizes that an exclusive emphasis on individual rights has not and cannot provide effective guarantees for indigenous peoples, who require the simultaneous protection of the collectivity as a whole in order to survive and flourish as distinct peoples and cultures. Collective rights also emphasize the value of protecting indigenous cultures and existence per se and reject assimilation and integration as valid modes of relating to indigenous peoples. Given the centrality of collective rights to our survival as distinct peoples, the draft declaration must continue to focus on and include these rights, especially with regard to our lands, territories and resources, which have always been held collectively.

Indigenous women's rights

24. Apart from articles 22 and 43, the draft declaration does not explicitly deal with the rights of indigenous women. For example, prohibitions of involuntary sterilization and enforced participation in birth control regimes are absent. Both examples are probably covered under the genocide and ethnocide provisions, and women's rights in general may be covered under any one of a number of other provisions, particularly those relating to self-government and respect for indigenous customs and institutions. None the less, indigenous women have repeatedly pointed out that their traditional role, rights and standing within indigenous communities have been negatively affected by contact with outside cultures and society. Therefore, while we believe that these issues are properly matters for discussion and promotion by indigenous women's groups and indigenous communities and peoples in general, some mention should be made of these rights in the draft declaration over and above a general non-discrimination clause.

Economic, social and cultural rights

25. The rights defined in Parts III, IV and elsewhere in the draft declaration are well established rights under existing international instruments, including the Universal Declaration of Human Rights, the International Covenants, the human rights instruments of the Organization of American States, the Council of Europe and the Organization of African Unity, as well as numerous United Nations declarations. These rights form the basis for a general right to cultural integrity or a prohibition of ethnocide that is an established norm of customary international law. The only difference in the draft declaration is that these rights attach both collectively and individually to indigenous peoples and indigenous individuals.

Treaty rights

26. Many indigenous peoples have concluded treaties and other agreements with States, colonial powers and other indigenous peoples. These treaties were made in good faith with the expectation that the word of each party would guarantee respect for the rights and duties defined therein. Indigenous peoples were de jure sovereign and independent peoples at the time these treaties were concluded. We were not given rights by others in these treaties, we reserved rights for ourselves. However, the colonial powers and their successors unilaterally abrogated these treaties, through self-serving legal fictions, and relegated them to the status of domestic law. Indigenous-state treaties are not domestic legislation subject to modification, violation or abrogation at the whim of States, they are international legal instruments subject to international law.

27. Article 36 provides for the "recognition, enforcement and observance of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent ...". The recognition that treaties concluded between indigenous peoples and States are valid and legitimate objects of international scrutiny and concern is important. To state otherwise would be to perpetuate a distinction based upon racial and cultural superiority and the notion that the powerful are free to ignore their obligations under international law simply because they have the

ability to dominate other peoples. Consequently, we believe that the core theme of article 36 is a rejection of the unilateral abrogation of indigenous-state treaties and the racist doctrines that have denied these instruments their true status, even if it does not explicitly state so, and the recognition that these instruments are valid according to their historical context and original intent.

28. Despite the important statement noted above, article 36 needs to be improved if it is to guarantee the recognition and enforcement of treaty rights. The major flaw, as we see it, is that article 36 does not provide indigenous peoples with independent access to the proposed dispute resolution mechanisms. This compromises the efficacy of the article as a whole and must be remedied. It should be noted here that the draft declaration does require that all disputes should be submitted to an international body "agreed to by all parties" (art. 36) and that the procedures used therein be "mutually acceptable and fair" (art. 39). However, in the absence of some arrangement with States to submit disputes (as provided for in article 39), indigenous peoples must rely upon the good will of States to submit the dispute. This is especially problematic as it may be against States' interests to do so.

Implementation

29. One of the most important aspects of the draft declaration is its implementation language. This language provides some concrete guidelines for indigenous peoples and States to construct a dialogue on the implementation and application of the draft declaration at the domestic level. In this context, it should be pointed out that, if the principle of partnership is to be respected, article 37's requirement that the draft declaration be implemented in "consultation" with indigenous peoples is inadequate. A better standard would be, for example, with the full participation and the free and informed consent of indigenous peoples. The principle of partnership can only be respected if the interaction and relationship between indigenous peoples and States is based upon mutual consent and understanding.

30. Article 39 is of vital importance, as some form of independent oversight and means of peaceably resolving disputes will be required to foster trust and understanding in indigenous-state relations. The consideration of indigenous customs, traditions and legal systems is a positive measure. However, if these customs, traditions and legal systems are to be interpreted and applied correctly, indigenous peoples must be represented, or at least participate substantially, in all aspects of the oversight and dispute resolution mechanism's composition, rules of procedure and operations. Furthermore, for the provisions on, among other things, lands, territories and resources to be effectively protection and guaranteed, claims by States to disputed lands, territories and resources and/or disputes over treaty rights must also be resolved prior to addressing the broader issues.

31. Recognizing that the draft declaration, Vienna Declaration and Programme of Action and the General Assembly have all called for the establishment of a permanent forum for indigenous peoples, which is currently being evaluated by the Working Group on Indigenous Populations, we will refrain from commenting on the oversight mechanism provided for in article 41 at this time. We would like to state, however, that any forum for indigenous peoples must be

participatory, representative and imbued with more than token powers and must, as a matter of priority, have the authority to oversee the implementation, in cooperation with other concerned United Nations bodies, of the draft declaration and any other international instruments relevant to indigenous peoples' lives, rights and affairs.

Conclusion

32. We have not expressed all our concerns about the specific provisions of the draft declaration or about its approval process. However, we have attempted to touch upon the most important principles, rights and themes contained therein. We believe that if these core principles and themes are to be respected, the draft declaration must be approved and forwarded intact and unchanged, if not improved upon. Rights to self-determination, autonomy and self-government, consent and rights to lands, territories and environmental security, to full and meaningful participation, to exist as distinct cultures and peoples, to name but a few, must all be recognized, respected and guaranteed.

33. The recognition of indigenous peoples' inherent right to self-determination must be the framework within which all other substantive rights are given effect. We recognize that States may be reluctant to recognize some of the rights defined in the draft declaration. However, as we have attempted to show above, we believe that these fears are unfounded. We, therefore, urge in the strongest possible terms that the Working Group transcend these illusive obstacles and respect the inherent right for all peoples to live in freedom and dignity and take the first step towards remedying the historic and contemporary abuses perpetrated against indigenous peoples. We are undeniably peoples and must be recognized as such; to fail to do so will only perpetuate an illogical, racist and discriminatory fiction that has justified and continues to justify our domination by other peoples, in direct contravention of the Charter of the United Nations and fundamental human rights norms. The same can also be said for rights to lands, territories and resources and the interrelated right to cultural integrity.

34. Finally, we believe that the draft declaration is a tool by which States and indigenous peoples can frame viable, cooperative partnerships based upon mutual rights and duties in order to ensure greater unity, democratic solidarity and to avoid conflict between peoples. Once again, we urge the Working Group to respect and approve the draft declaration in its present form, to refrain from indulging unfounded fears and to put an end to racist, illogical and discriminatory fictions and practices.